



REQUEST FOR QUALIFICATIONS

Public Art – Monumental Sculpture Downtown Dublin/Village Parkway

RFQ ISSUE DATE: April 5, 2024

RFQ DEADLINE: May 13, 2024, 4:00 p.m. PST

The City of Dublin invites artists with experience creating monumental sculptures to submit qualifications for an upcoming, large-scale public art project to be installed at the intersection of Dublin Boulevard and Village Parkway in the Downtown area of Dublin, California. From this list of qualified artists, the City will invite up to five artists to develop project specific proposals for consideration.

BACKGROUND

The City of Dublin, incorporated in 1982, is one of the fastest growing communities in California. Dublin is located in the Tri-Valley region, about 30 miles east of San Francisco, bordered by the cities of Pleasanton, Livermore, and San Ramon. Dublin has a robust public art program, with a municipal collection of more than 35 works, primarily outdoor sculptures, murals, and tile works acquired or commissioned in the last 20 years.

In 2020, the City updated its Public Art Master Plan. The Public Art Master Plan emphasizes highly visible artwork along major thoroughfares and prioritizes artworks within Downtown Dublin. This monumental sculpture project is anticipated to be along Dublin Boulevard, the main east-west thoroughfare in Dublin and the eastern gateway to Downtown Dublin.

MONUMENTAL SCULPTURE OPPORTUNITY

Downtown Village Art Project

The City anticipates installing a monumental sculpture at the northwest corner of the intersection of Dublin Boulevard and Village Parkway. This location is within Downtown Dublin, and more precisely, the Village Parkway District, which is one of three Districts within our Downtown area. Village Parkway is a pedestrian-oriented District that also accommodates through traffic. The District is predominantly a commercial district, largely developed for retail, office, and certain automotive uses. This intersection is a highly visible location with significant vehicular and pedestrian traffic.

The artwork will be located at the southern end of Village Parkway, which in recent years has been branded as “*The Village*” with ornamental light poles and street banners. Although located at a large intersection, many community members consider *The Village* to be the main pedestrian area of Downtown due to its size compared to the other two

Downtown Districts. It is worth noting that the Retail District is undergoing its redevelopment. It will be home to a new Town Square Park with surrounding housing and retail to serve as the City's pedestrian-friendly and walkable Downtown.

The Village sits just east of the Retail District and is separated from the rest of the Downtown by I-680. As a result, there has been a concentrated effort to brand this area as *The Village* and bring an outdoor dining presence to the area, making it vibrant and walkable. It is anticipated that future artwork will help define this space further. Artists selected to develop site specific proposals will be asked to connect existing branding and signage.

The Vision for Downtown Dublin that includes all three Districts is a vibrant and dynamic commercial and mixed-use center that provides a wide array of opportunities for shopping, services, dining, working, living, and entertainment in a pedestrian-friendly and aesthetically pleasing setting that attracts both local and regional residents. As Downtown Dublin continues to develop, the City is committed to investing in Public Art to further carry out the goals of the Downtown Dublin Specific Plan and Dublin Public Art Master Plan.

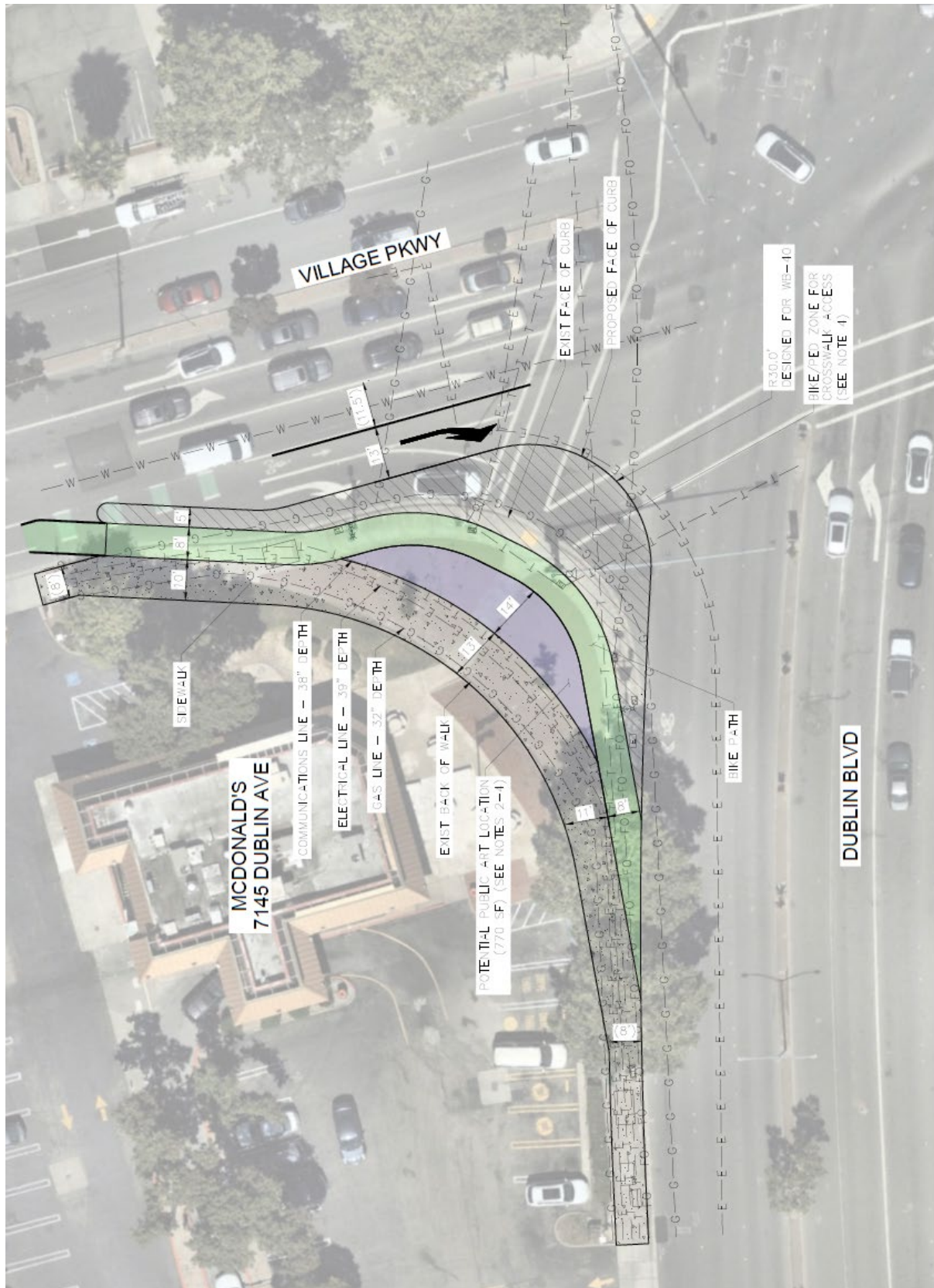
The artist budget for the project is expected to be approximately \$250,000 and will be awarded to a single artist. This budget is intended to be inclusive of all costs, including engineering, site preparation, fabrication, and installation. Detailed specifications and project scope will be shared with artists selected to develop site specific proposals.

The following materials may be helpful for interested artists:

- [City of Dublin Public Art Master Plan](#)
- [Downtown Dublin Specific Plan](#) (Includes information on the Village Parkway District)
- [Downtown Dublin Streetscape Plan](#) (Includes information on Village Parkway)

Artwork selection is anticipated to take place in Summer 2024, with design, fabrication, and installation to follow.

Proposed Artwork Location



DUBLIN BLVD @ VILLAGE PKWY NW CORNER

*Artwork Location is noted in purple.

ART SELECTION PROCESS

Staff Review

City Staff, including the Heritage and Cultural Arts Division, Public Works Department, and contract public art conservator, reviews all applicants. Staff Review evaluates artistic qualifications and merit; demonstrated ability to create works that are unique, appropriate to the location, and meaningful to the community; and experience working successfully with government agencies, engineers, architects and landscape architects, and project managers. The Staff Review also identifies up to 20 artists, to be presented to the Project Selection Committee.

Project Selection Committee Review of Artists

The Project Selection Committee made up of five to seven people, including stakeholders and members of the public, reviews the qualifications of up to 20 qualified artists. The Project Selection Committee narrows the list to no more than five artists invited to present a proposal for the project. Artists are invited to a site visit and meet with Staff to ensure an understanding of the project's scope and timeline.

Project Selection Committee Review of Designs

The Project Selection Committee is reconvened to review the submitted designs. Artists are required to attend this review and present their concepts in detail, as well as material samples, renderings, and maquettes. The Project Selection Committee will rank design proposals for the Heritage and Cultural Arts Commission. The Project Selection Committee may reject any or all designs, and may return to the qualified list if necessary.

Heritage and Cultural Arts Commission Meeting

The Heritage and Cultural Arts Commission reviews the Project Selection Committee's ranked recommendations. The Heritage and Cultural Arts Commission reviews projects based on whether they meet the goals and criteria identified in the Public Art Master Plan. Artists are required to attend the Heritage and Cultural Arts Commission Meeting and are expected to briefly present their concept, materials samples, renderings and maquette. The Heritage and Cultural Arts Commission will make a final recommendation to the City Council for approval.

City Council Review

City Council will review the proposed design recommended by the Heritage and Cultural Arts Commission. The Artist is required to attend the City Council meeting. The Artist will be notified in advance if City Council requests a presentation. In many cases, the Artist is present only to answer any questions from the City Council regarding their proposal. The City Council approves design proposals and artist contracts.

RFQ SPECIFICATIONS

Artist qualifications shall be submitted in **electronic form**. Electronic copy may be submitted via email, file sharing, or thumb drive. Please also provide a separate electronic version (.jpeg preferred) for any photographs. The packet should include:

- a. **Completed Coversheet:** Use the form provided at the end of this application.
- b. **Professional Resume/Biography:** Attach up to four pages detailing artistic accomplishments, including awards, commissions, exhibitions, related academic appointments, etc.
- c. **Images of Past Work:** Attach up to 12 color photographs of your work and jpeg versions of each (300 dpi, 5 MB or smaller). All images must be numbered 1-12. Please label each photo with the artist's name and image number, i.e., Smith-01, Smith-02. You may submit multiple views of the same artwork, for example, a detail shot, but each image counts as one of the 12.
- d. **Image List:** Attach a list of images, including image number, title of the artwork, year of completion, location, dimension, medium, and budget. If the piece was commissioned, indicate the commissioning organization and a brief project description.
- e. **References:** Contact information for three individuals who have worked with you recently on large-scale pieces. These could include clients commissioning work, project managers, architects, landscape architects, or engineers.

DIRECTIONS FOR SUBMITTAL: Packages containing the proposal and any related material shall be plainly marked on the outside in the following manner: "Dublin CA Public Art – Downtown Village Art." Package deliveries are accepted Monday-Friday, 8:00 a.m. to 5:00 p.m.

COSTS INCURRED IN RESPONDING TO THE RFQ: The City of Dublin shall not be liable for any costs incurred by an artist in responding to this request for qualifications.

SUBMISSION DEADLINE: All materials must be received by Shaun Chilkotowsky, Parks & Community Services Manager by **Monday, May 13, 2024, 4:00 PM**. It is the responsibility of the applicant to verify the receipt of materials by the scheduled deadline. Electronic versions may be delivered via email, file sharing website or on a thumb drive. Thumb drives will not be returned.

**RETURN YOUR QUALIFICATIONS AND SIGNED QUALIFICATION
COVERSHEET TO:**

Mail: Shaun Chilkotowsky, Parks & Community Services Manager
City of Dublin
Parks and Community Services
100 Civic Plaza
Dublin, CA 94568

Phone: (925) 556-4565

Email: shaun.chilkotowsky@dublin.ca.gov

QUALIFICATIONS COVERSHEET

Public Art – Downtown Village Public Art
Qualifications will not be accepted after Monday, May 13, 2024, 4:00 PM.

Artist: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Social Handles: _____

E-mail Address: _____ Website: _____

Signature of Artist: _____ Date: _____

A sample of the City’s Standard Public Art Agreement (Agreement), including insurance requirements, is provided as Attachment A.

If the interested firm desires to take exception to the Agreement and/or insurance requirements, the interested firm shall clearly identify proposed changes to the Agreement and furnish the reason for these changes, which shall be included in the qualification. Exceptions will be taken into consideration in evaluating responses. Otherwise, the interested firm shall confirm below that the Agreement and insurance requirements are acceptable. Exceptions will not be considered if not included in the submitted response.

Please initial confirming you have read the City’s Standard Agreement:

- I have read the City’s standard Agreement template and confirm my ability to meet requirements therein. Initials: _____ Date: _____
- I have read the City’s standard Agreement template and would like to request changes for consideration. Initials _____ Date: _____
(requested changes for consideration must be included with submittal materials)

Special Note for Artist Teams:

If multiple artists are applying as a team, please provide this coversheet and resume for each member of the team, and clearly designate one artist as the primary contact. Teams that do not have 12 images of past work done together may round out the images with the work of individual team members.

**PUBLIC ART AGREEMENT BETWEEN
THE CITY OF DUBLIN AND (Insert Artist Name)**

THIS AGREEMENT is made by and between the City of Dublin (“City”) and (insert Artist name) (“Artist”) as of _____, 20____, for the purposes and on the terms and conditions set forth below.

RECITALS

WHEREAS, the City requires the services of Artist to perform artistic services described in the Agreement for a public art project as described under Section 8.58 of the Dublin Municipal Code; and

WHEREAS, the City is authorized by Section 2.36.050 of the Dublin Municipal Code to contract for the specialized services of the artist contemplated by this Agreement; and

WHEREAS, Artist is qualified and desires to perform the artistic services required by the City as set forth in this Agreement; and

WHEREAS, the City Council, on _____, 20____, authorized the City Manager to negotiate an agreement between City and Artist for the preparation of a final design, fabrication and installation for a public art sculpture at (insert location).

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

AGREEMENT

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Artist shall provide to City the services necessary to provide the artwork (“Work”) described in the Artist Proposal described in **Exhibit A**, and in the Scope of Work attached as **Exhibit B** at the time and place, and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibit B**, the Agreement shall prevail.

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on the date of completion specified in **Exhibit B**, and Artist shall complete the Work described in **Exhibit A** prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 17. The time provided to Artist to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in Section 17.

1.2 **Standard of Performance.** Artist shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Artist is engaged in the geographical area in which Artist practices its profession. Artist shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Artist’s profession.

1.3 Assignment of Personnel. Artist shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Artist shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Artist shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Artist's obligations hereunder.

2. SCOPE OF WORK. Artist shall provide a final design, fabrication and installation of (insert what artist will be submitting to City) for (insert location) public art project as more specifically described in **Exhibits A** and **B** of this Agreement.

2.1 The City shall be responsible for providing the Artist, without cost, copies of designs, drawings, reports, and other relevant data needed by the Artist to design and execute the Project.

2.2 The Artist shall, whenever required during the term of this Agreement, present to the City in writing, drawing, or other appropriate media for further review and approval any significant changes in the scope, design, color, size, material, utility, support requirements, texture, or location of the site or the Work. A significant change is any change that could affect the future installation, scheduling, site preparation, or maintenance of the Work, or the concept of the Work as represented in the original concept design included in **Exhibit A**.

2.3 The City may, at any time, request the Artist in writing to (a) revise portions of the services that he/she has previously completed in a satisfactory manner; (b) delete portions of the Scope of the Work that the Artist has not yet performed; (c) perform additional work beyond the Scope of Work to be provided in Exhibit B; and, (d) make other changes within the General Scope of the Work to be performed under this Agreement. In the event of such a written request, the Artist may, but shall not be obligated to agree to any such request.

2.4 In the event the request for change is agreed to by the Artist, this Agreement shall be amended, in writing, specifying the agreed changes, including, but not limited to, a description of services, additional budget, payment schedule, and timetable. In the event that the Artist does not agree to the request, the City shall be entitled to terminate the Agreement for cause pursuant to Section 17 herein.

2.5 No services for which additional compensation will be charged shall be provided by the Artist without the prior written authorization by the City.

3. COMPENSATION. City hereby agrees to pay Artist a sum not to exceed \$ _____ as specified in the Payment Schedule as described in **Exhibit C**, notwithstanding any contrary indications that may be contained in Artist's proposal, for services to be performed under this Agreement; or subject to additional amounts for any revisions requested and change order approved by the City as provided for in Section 2.3 above or elsewhere in this Agreement. In the event of a conflict between this Agreement and Artist's proposal, attached as **Exhibit A**, regarding the amount of compensation, the Agreement shall prevail. City shall pay Artist for

services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified in **Exhibit C** shall be the only payments from City to Artist for services rendered pursuant to this Agreement. Artist shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Artist shall not bill City for duplicate services performed by more than one person.

Artist and City acknowledge and agree that compensation paid by City to Artist under this Agreement is based upon Artist's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Artist. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Artist and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

3.1 **Invoices.** Artist shall submit invoices as specified in **Exhibit B** and **C**, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- (a) Serial identifications of each billable phase; i.e., Bill No. 1 Phase I for the first invoice, etc.;
- (b) The beginning and ending dates of the billing period;
- (c) A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, the Artist's signature.

3.2 **Total Payment.** City shall pay for the services to be rendered by Artist pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Artist in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Artist submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

3.3 **Payment of Taxes.** Artist is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

3.4 **Payment upon Termination.** In the event that the City or Artist terminates this Agreement pursuant to Section 17, the City shall compensate the Artist for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Artist shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

3.5 Authorization to Perform Services. The Artist is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

4. FACILITIES AND EQUIPMENT. Except as set forth herein, Artist shall, at his/her sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Artist only the facilities and equipment listed in **Exhibit B**, and only under the terms and conditions set forth herein.

5. RESPONSIBILITY OF THE ARTIST

5.1 The Artist agrees that an essential element of this Agreement is the skill and creativity of the Artist. The Artist shall not assign the creative or artistic portions of the Work to another party for the production of the Work without the written consent of the City. Failure to conform to this provision may be cause for termination of this Agreement, at the sole option of the City.

5.2 The Artist shall be responsible for providing services described in **Exhibit B**, including but not limited to, the quality and timely completion of the services. As part of the Work, Artist shall be responsible for designing the Work, as described in **Exhibit A**, so that it can be constructed without exceeding the approved overall budget for the Work of \$. The Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his/her Work.

5.3 The Artist shall complete the fabrication and installation of the Work in substantial conformity with the attached **Exhibit B**, Scope of Work.

5.4 The risk of loss or damage to the Work shall be borne by the Artist until final acceptance by City. The Artist shall take such measures as are necessary to protect the Work from loss or damage until final acceptance by City.

6. TIMELY PROVISION OF SERVICES; DAMAGES FOR DELAYED PERFORMANCE. The parties agree that in the performance of the terms and requirements of this Agreement by the Artist that time is of the essence. Artist shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Artist's obligations pursuant to this Agreement.

6.1 Damages for Delayed Performance. Subject to reasonable proof and documentation confirming the same submitted by the City, Artist shall be liable for all incidental and consequential damages resulting, directly or indirectly, from delays in performance caused by Artist's acts or omissions. Damages may include, but are not limited to the cost to retrofit the Work installation area should Artist not meet installation schedule as specified in **Exhibit B**. The Artist shall not be liable to City for damages resulting from delays caused by force majeure or by acts or omissions of City, Architect or the General Contractor; or third party vandalism, except to the extent Artist failed reasonably to mitigate such damages. Illness, Injury, Death or Incapacity. Should Artist die, become ill, injured or otherwise incapacitated (collectively, "incapacitated") such that Artist is unable to work for any period not exceeding 30 days (whether consecutive or non-consecutive), any delay arising out of such incapacity will be allowed by City whenever it is

practicable to do so, considering the facts and circumstances of the Work, the Project, the Architect, the General Contractor and the Client. City may require Artist to provide medical certification of any claimed incapacity. In the event Artist is incapacitated such that Artist is unable to work for a period exceeding a total of 30 days (whether consecutive or nonconsecutive), City may, at its option, undertake to complete and install the Work in Artist's absence, so long as the final Work is substantially similar to that designed by Artist. If City undertakes to complete the Work, City shall give due consideration to Artist's suggestions, and Artist may disclaim authorship of the Work. If City exercises its option to implement the Work in Artist's absence, any compensation paid or payable to Artist shall be reduced by the costs and expenditures of City in completion and installation of the Work. In case of incapacity exceeding 30 days, the following person shall be Artist's representative vis-à-vis the City for purposes of this Section 6 unless otherwise directed in writing by the Artist:

Name:
 Address
 City, State, ZIP
 Phone:
 Email:

7. APPROVAL AND FINAL ACCEPTANCE OF WORK. Payment does not imply acceptance of work. The granting of any payment by City, or the receipt thereof by Artist, shall in no way lessen the liability of Artist to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Artist without as soon as possible.

7.1 The granting or withholding of any approval by the City shall be determined by the City in its sole and reasonable discretion. However, the City shall approve all deliverables if they materially conform to plans or Contract Documents previously approved by the City. If the City withholds approval of any deliverables or Phase, in addition to other rights or remedies available to the City under the Agreement or applicable law, the City shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement.

7.2 Final Acceptance. Artist shall advise the City in writing when Artist has completed all obligations, services and deliverables under this Agreement and all modifications. The City promptly shall send a Notice of Response identifying in writing any obligations, services, or deliverables that Artist has not satisfactorily met, any defects in Artist's performance, and the requirements for Artist to cure any such default. Artist shall have twenty (20) days from dispatch of the Notice of Response to cure any defects in Artist's performance identified in the City's Notice of Response. The Work shall not be officially accepted by City unless the City has issued a resolution of Final Acceptance. City shall make a good faith effort to make a determination as to Final Acceptance promptly. Final Acceptance occurs once Work is delivered and installing in consultation with Parks Department, and City and inspected and approved the Work.

7.3 Public Art Collection. Upon Final Acceptance, the City shall accession the Work into the Public Art Collection.

8. WARRANTIES/STANDARDS

8.1 Unique. Artist warrants that the design of the Work as expressed in the Proposal, Exhibit A, is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Work. Artist may create works that utilize or incorporate various individual art elements that comprise the Work, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements, (2) is not the same or substantially similar in image, design, dimensions and materials as the Work, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Work is to be displayed at the site.

8.2 Warranty of Title. Artist represents and warrants that Artist is the sole author of the Work and that Artist is the sole owner of any and all copyrights pertaining to the Work. Artist further represents that the Work is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Work or any parts of the Work.

8.3 The Artist shall faithfully perform the work required under this Agreement in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this Agreement. Artist shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Artist shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons, unless in the Artist's sole opinion, the skill or creativity of such person or persons is essential to the creation of the Work.

8.4 Warranty of Workmanship. The Artist shall guarantee his/her Work to be free from faults of material and workmanship for a period of one (1) year after installation and Final Acceptance by the City. The Artist shall deliver the Work to the City free and clear of any liens from any source whatsoever. The foregoing guarantees shall apply only to the Work that is entirely that of the Artist or persons responsible to the Artist, as installed, and shall not apply to materials or workmanship of projects in which the Work of the Artist is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not responsible to the Artist.

8.5 Warranty of Public Safety. Artist represents and warrants that the Work will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.

8.6 Warranty of Acceptable Standard of Display and Operation. Artist represents and warrants that:

8.6.1 Occasional or minimal cleaning and repair of the Work and any associated working parts and/or equipment will maintain the Work within an acceptable standard of public display;

8.6.2 Foreseeable exposure to the elements and general wear and tear will cause the Work to experience only minor repairable damages and will not cause the Work to fall below an acceptable standard of public display; and

8.6.3 With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

8.7 Manufacturer's Warranties. To the extent the Work incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to City.

9. MAINTENANCE OF WORK

9.1 Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of the Work.

9.2 Artist shall provide the City with a General Maintenance Plan for the Work, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Work and associated moving parts or equipment including any staff time involved in displaying or operating Work and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Work.

9.3 The Work shall be durable, taking into consideration that the installation site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense.

9.4 Although City strives to maintain the Public Art Collection in good repair and condition, City is not required by this Agreement to maintain the Work to any particular standard. City may determine to allow the Work to deteriorate in accordance with the Work's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Work suffers deterioration, City shall have sole discretion to determine whether to remove the Work from display as a result of deterioration, whether to replace any portion of the Work or translate any component into new media, or whether to maintain the Work on display despite its deteriorated condition.

9.5 The anticipated life span of the Work is 25 years from the date of final acceptance by the City. After that time, the City in its sole discretion may re-evaluate the Work to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Work. If the City determines that, through decay, vandalism or

other forces, the Work has lost its integrity to the point where it should be destroyed, the City shall first offer the Work to Artist free of charge and in writing.

10. ARTIST'S RIGHTS; CITY'S OWNERSHIP RIGHTS

10.1 Artwork Removal. The Work may be removed from the Site at any time. Artist acknowledges and understands that the installation of the Work at the Site may subject the Work to destruction, distortion, mutilation, or other modification due to the acts of the City or third parties or to its removal, repair, maintenance, storage, or transfer of ownership.

10.2 The City intends to display the Work as originally created by Artist in **Exhibit A** and to maintain the Work in good condition. Public artworks commissioned by the City are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of a building's architecture or landscaped environment and removal of the Work would result in significant changes to the Work and the building's architecture. City, however, shall preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to alter the Work in City's sole judgment. For example, City may alter the Work to eliminate hazard, to comply with the Americans with Disabilities Act, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Work at an alternate location that City chooses in its sole discretion. If the Work is free-standing such that it can be removed without significant damage to the Work or the Site, and if the City authorizes the removal of the Work, the City shall take reasonable precautions to minimize alteration of the Work during removal.

10.3 With respect to the Work produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal, or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Work is incorporated into a building such that the Work cannot be removed from the building without alteration of the Work, Artist waives any and all such claims against any future owners of the site, and its agents, officers and employees, for alteration of the Work. Artist shall provide City with aforementioned waivers prior to the commencement of work.

10.4 If City intends to take any action with respect to the site or the Work that would alter the Work, other than routine cleaning and maintenance, the following procedures shall apply:

10.4.1 Notice. Where time permits, City shall make reasonable good faith efforts to notify Artist at least twenty (20) calendar days prior to authorizing any alteration of the Work, at the last phone number or address provided by Artist to the City's Contract Administrator. Where time does not permit prior to alteration of the Work – for example, in cases of public

hazard, accident or unauthorized alteration – City shall notify Artist within thirty (30) calendar days after such alteration.

10.4.2 Consultation. After receiving such notice, Artist shall consult with City to determine whether the Work can be restored or relocated, and to attempt to come to a mutually agreeable plan for disposition of the Work. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If City intends to remove the Work, Artist shall consult regarding methods to minimize or repair any Alteration to the Work caused by such removal and the potential costs of such removal.

10.4.3 Restoration. If the Work is altered, with or without prior notice to Artist, and City intends to maintain the Work on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Work and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to restore the Work to its original condition, to compensate Artist for any restoration work, or to maintain the Work on display. If Artist fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or artist for such restoration. During Artist's lifetime, City shall make best efforts not to display or de-accession only a portion of the Work without Artist's consent.

10.4.4 Removal by Artist. Where time permits, if City intends to take action that will destroy or significantly alter the Work, such as destruction of all or part of the site, and City determines that it will not remove the Work itself, City shall allow Artist to remove the Work at Artist's expense within 60 days of notice from the City of the need to remove the Work, in which case title shall revert to Artist. If Artist fails to remove the Work within that 60 day period, City may alter the Work in any manner, including destroying it, in City's sole discretion.

10.4.5 Remedies. If City breaches any of its obligations under this Section, Artist's remedies shall be limited as follows: If City inadvertently fails to provide a required prior notice of alteration, City will provide notice as soon as it discovers the omission, and before alteration of the Work if that remains possible. If City alters the Work without providing Artist a required prior notice of alteration, Artist shall be given the first right of refusal to restore the Work at the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Work at Artist's expense. If Artist elects not to restore the Work, City may retain another artist or conservator to restore it, or may Alter the Work in any manner, at City's sole discretion.

10.5 If City alters the Work without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Work in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

10.6 Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, Artist retains Artist's moral rights in the Work, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state,

federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for alteration of the Work against a third party who is not an officer, employee, agent, successor or assign of City. City has no obligation to pursue claims against third parties to remedy or prevent alteration of the Work. However, as owner of the Work, City may pursue claims against third parties for damages or to restore the Work if the Work has been altered without City's authorization.

11. INTELLECTUAL PROPERTY AND PUBLICITY RIGHTS

11.1 Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of the Work, such as landscaping elements, furnishings, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Work.

11.1.1 Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of California and the United States. Artist hereby represents and warrants that the work does not, and Artist has not and will not, utilize any protected patent, trademark or copyright in performance under this Agreement unless and until Artist has obtained proper permission and all releases and other necessary documents.

11.1.2 Artist agrees to release, indemnify, defend, and save harmless City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance under this Agreement which infringes upon any patent, trademark or copyright or other right protected by law.

11.2 City's Intellectual Property License. Artist grants to City, and to City's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Work, the Work, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

11.2.1 Implementation, Use, and Display. City may use and display the Work (to the extent the Work includes graphic representations or models) and the Work. To the extent the Work involves design elements that are incorporated by City into the design of the site, City may implement such elements at the site.

11.2.2 Reproduction and Distribution. Artist hereby grants to City a perpetual, royalty-free, non-exclusive license to reproduce or perform any works created under this Agreement for any City purpose. City may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. City may use such reproductions for any City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for City benefactors, documentation of City's Public Art Collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the City. The proceeds

from the sale of any such reproductions shall be used to maintain and support City's Public Art Collection or for any other public purposes that City deems appropriate. The license granted hereunder includes the right to create 2-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Nothing hereunder shall be construed to constrain Artist from creating posters, note cards, or other reproductions of the Work with appropriate credit to the City.

11.2.3 Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the San Francisco Sunshine Ordinance and California Public Records Act.

11.3 Third Party Infringement. The City is not responsible for any third party infringement of Artist's copyright and is not responsible for protecting the intellectual property rights of Artist.

11.4 Credit. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: "[REDACTED] (c), date." The Artist shall use his/her best efforts to include a credit reading substantially "An original work commissioned by the City of Dublin, California" in any public showing under the Artist's control of reproductions of the Work.

11.5 Publicity. City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Work including all advertising and promotional materials regarding City or the City. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Work.

11.6 Trademark. In the event that City's use of the Work creates trademark, service mark or trade dress rights in connection with the Work, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

11.7 Resale Royalty. If City sells the Work as a fixture to real property, and if the resale value of the Work is not itemized separately from the value of the real property, the parties agree that the resale price of the Work shall be presumed to be less than the purchase price paid by City under this Agreement. Thus, City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If City sells the Work as an individual piece, separate from or itemized as part of a real property transaction, City shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of the Work.

11.8 If for any reason the proposed design is not implemented, all rights to the proposed Work shall be retained by the Artist. The City shall have no right to implement the proposed Work, whether or not protected by copyright, unless and until the City and the Artist enter into a subsequent agreement for the implementation of the proposed design.

12. OWNERSHIP OF RESULTS AND RISK OF LOSS

12.1 Title Transfer. Except in the case of early termination of this Agreement, title to the Artwork shall transfer from Artist to City upon the City's Final Acceptance of the Work. Title transfer shall be self-executing upon City's Final Acceptance. Artist will cooperate in providing to City any title transfer documents City may request or require during or after the Term of this Agreement.

12.2 Risk of Loss. The risk of loss or damage to the Work shall be borne solely by Artist until Final Acceptance of the Work by the City. Artist shall take steps to protect the Work from loss or damage. The City staff shall make a good faith effort to inspect the Work within 15 days after completion so that the City can approve the Work by resolution in a timely fashion.

12.3 Ownership of Documents. Conceptual Design, Design Development Documents, Construction Documents, Samples, Mock-ups and all other documents prepared and submitted by Artist to the City pursuant to this Agreement shall belong to the City. Artist may retain originals of such documents and items and provide copies to City.

13. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Artist, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Artist and its agents, representatives, employees, and subcontractors. Artist shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Artist shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Artist's bid. Artist shall not allow any subcontractor to commence work on any subcontract until Artist has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

13.1 Commercial General and Automobile Liability Insurance.

13.1.1 General Requirements. Artist, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

13.1.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9 (“any auto”). No endorsement shall be attached limiting the coverage.

13.1.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(a) City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Artist, including the insured’s general supervision of Artist; products and completed operations of Artist; premises owned, occupied, or used by Artist; and automobiles owned, leased, or used by the Artist. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

(b) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(c) An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

(d) Any failure of Artist to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(e) An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Artist shall notify City within fourteen (14) days of notification from Artist’s insurer if such coverage is suspended, voided or reduced in coverage or in limits.

13.2 All Policies Requirements.

13.2.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

13.2.2 Verification of Coverage. Prior to beginning any work under this Agreement, Artist shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.2.3 Subcontractors. Artist shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

13.2.4 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

13.2.5 Deductibles and Self-Insured Retentions. Artist shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Artist may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Artist procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

13.2.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Artist shall provide written notice to City at Artist's earliest possible opportunity and in no case later than five (5) days after Artist is notified of the change in coverage.

13.3 Remedies. In addition to any other remedies City may have if Artist fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Artist's breach:

- (a) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- (b) Order Artist to stop work under this Agreement or withhold any payment that becomes due to Artist hereunder, or both stop work and withhold any payment, until Artist demonstrates compliance with the requirements hereof; and/or
- (c) Terminate this Agreement.

14. INDEMNIFICATION AND ARTIST'S RESPONSIBILITIES. Artist shall indemnify, defend with counsel mutually selected by the City and Artist, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Artist or its employees, subcontractors, or agents, by acts for

which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Artist shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Artist or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Artist to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Artist from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies are determined to apply. By execution of this Agreement, Artist acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Artist or any employee, agent, or subcontractor of Artist providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (“PERS”) to be eligible for enrollment in PERS as an employee of City, Artist shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Artist or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

15. STATUS OF ARTIST AS INDEPENDENT CONTRACTOR

15.1 Independent Contractor. At all times during the term of this Agreement, Artist shall be an independent contractor and shall not be an employee of City. City shall have the right to control Artist only insofar as the results of Artist's services rendered pursuant to this Agreement and the assignment of personnel. Otherwise City shall not have the right to control the means by which Artist accomplishes services rendered pursuant to this Agreement. Notwithstanding any other city, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Artist and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

15.2 Nothing contained in this Agreement shall be construed as limiting the right of Artist to engage in his/her profession separate and apart from this Agreement so long as such activities do not interfere with the performance by Artist of his/her obligations as set forth in this Agreement.

15.3 Artist is not an Agent. Except as City may specify in writing, Artist shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Artist shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

16. LEGAL REQUIREMENTS

16.1 Governing Law. The laws of the State of California shall govern this Agreement.

16.2 Compliance with Applicable Laws. Artist and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

16.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Artist and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

16.4 Licenses and Permits. Artist represents and warrants to City that Artist and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Artist represents and warrants to City that Artist and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Artist and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

16.5 Nondiscrimination and Equal Opportunity. Artist shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Artist under this Agreement. Artist shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Artist thereby.

16.6 Prevailing Wage. This Agreement may be subject to prevailing wage.

Where applicable, if Artist's work involves fabrication and/or installation at the Site, without limitation of any other provision of this of the Agreement, Artist must pay or cause to be paid, prevailing wages for all work done under this Agreement as required by California law. All subcontractors hired by Artist in relation to this Agreement must be registered, pursuant to Section 1725.5 of the California Labor Code. Where applicable, this project may be subject to compliance monitoring and enforcement by the Department of Industrial Relations ("DIR"). Where applicable, in the performance of the Agreement, employees of Artist and all subcontractors, engaged by the Artist carrying out covered work shall be responsible for compliance with California Labor Code Sections 1776 (payroll records, retention, inspection, noncompliance penalties, rules, and regulations) and 1777.5 (employment of registered apprentices, wages, standards, number, apprenticeship or trade, exemptions, and contributions), and submit weekly for each week in which any contract work is performed a certified copy of all payrolls for its employees and a certified copy of all its subcontractor's payrolls directly to the California Labor Commissioner, DIR, and the City within one week following week when work

is performed. Payrolls shall conform to the requirements of the Labor Code Section 1776 and shall be in the form acceptable to the City.

Pursuant to appropriate sections of the Labor Code of the State of California, the Director of the DIR has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pension, and similar purposes) applicable to the work provided by covered contractors for straight time, overtime, Saturday, Sunday and holiday work. Where applicable, Artist shall post a copy of the prevailing wage rates at the Site or material staging area.

Workers employed in work covered by prevailing wage must be paid at the rates at least equal to the prevailing wage rates as adopted. If Artist uses a craft or classification not shown on the prevailing wage determinations, Artist may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of award of this Agreement. Failure to pay such prevailing wages shall subject the employer to the penalties set forth in Labor Code Section 1775.

If Artist requires the use of employees and/or subcontractors in order to perform any work related to the Artist's Services, Artist will contact the City to set up a meeting to discuss the following: project registration with DIR, certified payroll upload into California DIR eCPR, and submission of statement of compliance with monthly invoice

17. TERMINATION AND MODIFICATION

17.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Artist.

Artist may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Artist shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Artist delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Artist or prepared by or for Artist or the City in connection with this Agreement.

17.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Artist understands and agrees that, if City grants such an extension, City shall have no obligation to provide Artist with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Artist for any otherwise reimbursable expenses incurred during the extension period.

17.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

17.4 Assignment and Subcontracting. City and Artist recognize and agree that this Agreement contemplates personal performance by Artist and is based upon a determination of Artist's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Artist. Artist may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Artist shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

17.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Artist shall survive the termination of this Agreement.

17.6 Options upon Breach by Artist. If Artist materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

17.6.1 Immediately terminate the Agreement;

17.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Artist pursuant to this Agreement;

17.6.3 Retain a different Artist to complete the work described in Exhibit A not finished by Artist; or

17.6.4 Charge Artist the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Artist pursuant to Section 2 if Artist had completed the work.

18. KEEPING AND STATUS OF RECORDS

18.1 City Access to Work; Inspection of Work and Work. City shall have the reasonable right to, at its sole expense, inspect the Work, including the Work, at the fabrication Site during any phase of the project at any time. In the event that all or part of the Work is created in a location other than the Site, the City shall have the right to inspect the Work, including the Work, at any phase of the project following forty-eight (48) hours written notice from the City to the Artist. The Artist shall be responsible for facilitating City's prompt access to Artist's property or the property of the Artist's subcontractors where the Work or portions of the Work are being fabricated or installed.

18.2 Status Reports. Artist shall submit written reports regarding the status of the Work, including the Work, as may be reasonably requested by the City. The City shall determine the format for the content of such reports. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

18.3 Artist Availability. Artist or Artist's authorized agent shall be available at Artist's sole expense for up to two (2) visits to Dublin to ensure the proper installation and operation of

the Work. During each visit to Dublin, unless otherwise agreed upon by the City, the Artist's visit shall last for at least a full eight (8) hour day.

18.4 Records Created as Part of Artist's Performance. With the exception of model submitted with initial proposal, all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Artist prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Artist hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Artist agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties. It is also agreed that proposal model remains property of the Artist and will be returned to Artist after the finished sculpture is installed.

18.5 Artist's Books and Records. Artist shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Artist to this Agreement.

18.6 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Artist to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

19. MISCELLANEOUS PROVISIONS

19.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

19.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda.

19.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

19.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

19.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

19.6 Use of Recycled Products. Artist shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

19.7 Conflict of Interest. Artist may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Artist in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq.

Artist shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq.

Artist hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Artist was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Artist warrants that it did not participate in any manner in the forming of this Agreement. Artist understands that, if this Agreement is made in violation of Government Code § 1090 et. seq., the entire Agreement is void and Artist will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Artist will be required to reimburse the City for any sums paid to the Artist. Artist understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

19.8 Solicitation. Artist agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

19.9 Contract Administration. This Agreement shall be administered by the City Manager or his/her designee ("**Contract Administrator**"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

19.10 Notices. Any written notice to Artist shall be sent to:

Name:
Address
City, State, ZIP
Phone:
Email:
Website:

Any written notice to City shall be sent to:

City Manager
City of Dublin
100 Civic Plaza
Dublin, CA 94568
(925) 833-6645

19.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

Seal and Signature of Registered Professional with report/design responsibility.

19.12 Integration. This Agreement, including the proposal, scope of work, and payment schedule attached hereto and incorporated herein as Exhibits A, B and C, represents the entire and integrated agreement between City and Artist and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY:

ARTIST:

By: _____

By: _____

Name: Linda Smith

Name: (insert name)

Title: City Manager

ATTEST:

By: _____

Name: Marsha Moore

Title: City Clerk

APPROVED AS TO FORM:

By: _____

Name: John Bakker

Title: City Attorney

EXHIBIT A
Artist Proposal

EXHIBIT B
Scope of Work

EXHIBIT C
Payment Schedule

5408513.5